in the case of ——— v. *Western Transportation Company*, and not reported. The facts were substantially the same in that case as in this, and he dismissed it for want of jurisdiction. His opinion, until reversed, is the law of this circuit and should be decisive of the question raised here.

The opinion of Judge WOODRUFF, the Circuit Judge of the Second Circuit, in the late case of *Atkins* v. *The Fibre Disintegrating Company* (see *infra*), reversing the judgment of Judge BENEDICT, as reported in 1 Benedict 118, takes the same view of the question. The opinions of Judges MCLEAN and WOODRUFF embody many of the views I have suggested, and very ably, I think, present the reasons and considerations pertinent to the subject, with the authorities.

I am compelled to concur with the conclusions of those judges, and to hold that the jurisdiction of the defendants in this case was not acquired by this court by the attachment. The plea to the jurisdiction is sustained—the libel dismissed.

United States Circuit Court, Eastern District of New York.[1]

JOSHUA ATKINS ET AL., APPELLEES, *v.* THE FIBRE DISINTEGRATING COMPANY, APPELLANT.

In a proceeding *in personam* on a maritime contract, in a court of admiralty of one district against a citizen of another district, service by attachment of his property is not sufficient, and confers no jurisdiction.

For the purposes of such a question a corporation is to be held a citizen of the state in which it is incorporated.

An entry on the record that "Mr. B. appears for respondent and has a week to perfect an appearance and answer," does not show such an appearance as amounts to a voluntary submission to the jurisdiction.

THIS was a libel for freight and demurrage. The libel concluded with a prayer for a decree "for the payment by the respondents of the sum," &c.

On the return-day the marshal returned the process, respondents not found, and that he had attached all the property of the respondents in their factory at Red Hook, in the city of Brooklyn. And on that day, the record stated, "Mr. Beebe appears

[1] See ante pp. 379, 383.

for respondent, and has a week to perfect appearance and to answer."

Thereupon the respondents procured an order to show cause why the property should not be discharged from the attachment, or why such other order should not be made, as the court should see fit to grant.

The affidavits, on the part of the respondents, showed that the officers of the respondents' corporation were within the jurisdiction, and that no effort was made by the marshal to find or serve them.

The affidavits produced and filed by the libellants showed that the respondents are a corporation incorporated by the laws of the state of New Jersey, but having a manufactory and carrying on business in the eastern district of New York.

The motion being denied, the respondents answered, and the court made a decree against them, on the merits (see 1 Benedict 118), from which decree this appeal was taken.

E. C. Benedict, for libellants.

Charles Donahue, for respondents.

WOODRUFF, Circuit Judge.—The appellant (respondent below) insists that the District Court had no jurisdiction to proceed herein, because such respondent was not an inhabitant of the eastern district of New York, nor found therein. If the respondent is right in this, it will be wholly unnecessary to consider any question arising on the merits, on the appeal of either party. But the libellants insist that the respondent was not in a situation to raise the objection, and that by appearance the objection was waived. I think that in this the claim of the libellant has no sufficient foundation. The record shows only this: that on the return-day of the process "Mr. Beebe appears for the respondent, and has a week to perfect an appearance and answer." This ought not to be regarded as an appearance which operates as a voluntary submission to the jurisdiction and waiver of the objection.

No doubt that a general appearance and answer without objection is to be deemed a voluntary appearance, and is equivalent to service of process within the district. But here the respondents were allowed time to perfect an appearance, and immediately moved to set aside the proceeding, and, that being denied by the

court, they were compelled to answer, and did so by setting up the objection. It was according to the ancient practice in admiralty in cases of attachment not to recognise anything as an appearance but putting in of bail, and a similar practice formerly obtained in New York, in cases of attachments against foreign corporations. Now, although special bail be not now required in New York, it is obvious that neither party regarded an appearance by the respondents as perfected, and the respondents stipulated expressly that the subsequent bond for value should not operate as a waiver of their motion.

Upon the important question whether a court of admiralty in one district can obtain jurisdiction to proceed against an inhabitant of another district by attachment of his goods, the opinion of the district judge in this case shows some conflict of opinion.

The question is not affected by the circumstance that the respondents are a corporation. For the purposes of the question, a corporation must be deemed an inhabitant of the state in which it is incorporated, and it is as clearly within the reason of the rule, regulating jurisdiction over inhabitants, as a natural person. I therefore treat the question precisely as I should if the respondent was a natural person, an inhabitant of New Jersey, sued in the Eastern District of New York, by attachment of his goods, and not found nor served with process.

Had the District Court, sitting in admiralty, jurisdiction to proceed in that manner against the respondent upon the cause of action alleged?

The cause of action was maritime, and therefore it was a subject of admiralty jurisdiction. This is not questioned by the respondents. Thereupon the libellants insist that it is according to the long and well established practice of courts of admiralty to proceed against a respondent by attachment of his goods if he absconds from or cannot be found within the jurisdiction of the court to be served with process. That when the Congress of the United States established courts of admiralty and gave them "cognisance of all civil causes of admiralty and maritime jurisdiction" (Act of September 24th 1789, "to establish the judicial courts of the United States," sect. 9. 1 Stat. 76), and provided that the forms and modes of proceedings in causes of * * admiralty and maritime jurisdiction shall be according to the course of the civil law (act to regulate process, &c., September 24th

1789, sect. 2. 1 Stat. 93), they sanction this mode of obtaining jurisdiction to proceed against a respondent, *in personam*, for the recovery of a demand which is in its nature cognisable in those courts.

That this is further confirmed by the act for regulating process, passed May 8th 1792 (sect. 2. 1 Stat. 276), which provides "that the forms of writs, executions, and other process, except their style, and the forms and modes of proceeding in suits in those of common law shall be the same as those now used in the said courts respectively, in pursuance of the act entitled "An act to regulate processes in courts of the United States;" in those of equity, and those of admiralty and maritime jurisdiction, according to the principles, rules, and usages which belong to courts of equity and to courts of admiralty respectively, as contradistinguished from courts of common law; *except so far as may have been provided for by the act to establish the judicial courts of the United States*, subject, however, to such alterations and additions as the said courts, respectively, shall in their discretion deem expedient, or to such regulations as the Supreme Court of the United States shall think proper, from time to time, by rule, to prescribe to any circuit or district court concerning the same."

That if the question were before doubtful no such doubt can exist since the Act of 23d August, 1842 (5 Stat. 517), which by section 6 gave to the Supreme Court of the United States full power * * to prescribe and regulate and alter the forms of writs and other process to be used in the district and circuit courts, and the forms and modes of framing and filing libels, bills, answers, and other proceedings and pleadings in suits at common law or in admiralty and in equity pending in said courts; * * * and generally to regulate the whole practice of the said courts so as to prevent delays and to promote brevity and succinctness in all pleadings and proceedings therein, and to abolish all unnecessary costs and expenses in any suit therein.

That by authority of the foregoing statutes, the Supreme Court have provided by rule that where the respondent to a libel filed in admiralty cannot be found within the district, process may issue against his property in such district, &c. (see 2d rule in Admiralty).

The general proposition deducible from the statutes above referred to was decided by the Supreme Court of the United

States in the case of *Manro et al.* v. *Almeida*, in 1825 (10 Wheat. 473), and is not open for discussion in this court, viz.: "The courts of the United States, proceeding as courts of admiralty and maritime jurisdiction, may issue the process of attachment to compel appearance in cases of maritime torts and contracts." As this is the only case in which the question appears to have been raised and passed upon in that court, and as the decision of that court is conclusive upon me, it is important to state what the case was in which the above general proposition is held and to what precise extent the decision goes.

The libel was filed in the District of Maryland, charging Almeida with having committed a tort on board a certain vessel off the capes of the Chesapeake, taking therefrom $5000 in specie and converting it to his own use. It appears by the statement of the case that Almeida resided in the district but had absconded from the United States and fled beyond the jurisdiction of the court, and the libel averred that the libellants had no means of redress but by process of attachment against his goods, chattels, and credits, which were also about to be removed by his orders to foreign parts. The goods, &c., were attached by the marshal, and a copy of the monition was left at the late dwelling-house of Almeida, and a copy affixed at the public exchange and on the mast of the vessel containing the attached goods, &c.

On demurrer to the libel, the questions decided were raised, and from the decision, dismissing the libel, appeal was taken to the Supreme Court and the decree was reversed.

The decision therefore affirms that it is within the power and jurisdiction of the District Court as a court of admiralty to issue process of attachment to compel the appearance of a respondent proceeded against by a suit *in personam*, and that in the United States such process may issue whenever the defendant has concealed himself or absconded from the country. A case in Bee's Adm. Rep., p. 141, is referred to as an authority in this country, and Clerke's Praxis by Hall, part 2, tit. 28, is cited for the general practice of the civil law. The opinion of the court shows further that the attachment was originally devised and is still maintained as a means of compelling the respondent to appear in the suit to answer, and that this is its primary object, while if he does, nevertheless, not appear, the goods, &c., may be sold to satisfy the libellant.

In *Cushing* v. *Laird*, recently decided in the District Court of the United States for the Southern District of New York, Judge BLATCHFORD has examined the subject further, and concludes mainly upon the authority of the case of *Almeida* and of the text of Clerke's Praxis, that the jurisdiction and power to attach property to compel an appearance also exists in this country where the defendant is not an inhabitant of the United States, but is an alien not found within the district but having property there which can be attached.

With these decisions the case now before me raises no controversy. They are in perfect consistency with the ground relied upon by the respondents here, to wit, that, being in a legal sense inhabitants of the District of New Jersey, they could not be sued in the Eastern District of New York by process of attachment and seizure of their goods.

And it is of great pertinency to say that recognising the principles and practice sanctioned by the decisions above referred to completely satisfies the provisions of the Acts of Congress already cited, and gives a proper and sufficient field for the operation of the act regulating the practice of the court and the rule of the Supreme Court of the United States prescribing the process of attachment when the defendant cannot be found within the district; for by these decisions, if he be concealed or have absconded or be an alien non-resident, there is occasion for the process.

The question then recurs, and entirely without conflict with those statutes or with the rule of court or with those decisions, Can an inhabitant of the United States be sued in a court of admiralty by process of attachment of his goods issued and served to compel his appearance in any other district than that whereof he is an inhabitant?

The Judiciary Act of 1789 establishes the judicial tribunals, defines their location and the times of holding courts, distributes and limits their jurisdiction and regulates the manner of its exercise, with other details to complete the system (Act of September 24th 1789, to establish the judicial courts of the United States, 1 Sess., ch. 20. 1 Stat. 73).

By the first section the organization of the Supreme Court was declared.

By the second the United States was divided into judicial districts, limited and designated as therein prescribed.

By the third it was declared that there should be a district court in each district, and its constitution and its sessions are fixed.

By the fourth the districts (excepting Maine and Kentucky) were divided and allotted to circuits (embracing several districts), and circuit courts in each circuit provided for.

By the fifth the various sessions of the circuit court in the respective circuits are appointed.

Organization being thus provided for, the sixth, seventh, and eighth sections provide for adjournments, vacancies, continuances, appointment of clerks, their oath of office, and the oaths of office of the judges.

Then, in section nine, the jurisdiction of the district courts is conferred: First of certain crimes and offences, and next, they shall also have exclusive original cognisance of all civil causes of admiralty and maritime jurisdiction, including seizures under laws of import, &c., where the seizures are made on waters navigable, &c., within their respective districts, as well as on the high seas; and shall have exclusive cognisance of all seizures on land, &c., &c.; and of all suits for penalties and forfeitures incurred under the laws of the United States; and shall have cognisance concurrently with the courts of the several states or the circuit courts of all cases where an alien sues for a tort only in violation of the law of nations, or of a treaty of the United States; and also concurrently, as last mentioned, of all suits at common law, where the United States sue and the amount in dispute amounts * * to one hundred dollars; and also of suits against consuls, &c. &c.

The tenth section gives to the District Court in Kentucky certain circuit-court powers.

And the eleventh section defines the jurisdiction of the Circuit Court, and provides as follows: "That the Circuit Court shall have original cognisance concurrent with the courts of the several states of all suits of a civil nature at common law or in equity, when the matter in dispute exceeds (exclusive of costs) the sum or value of five hundred dollars, and the United States are plaintiffs or petitioners, or an alien is a party, or the suit is between a citizen of the state where the suit is brought and a citizen of

another state. And shall have exclusive cognisance of all crimes and offences cognisable under the authority of the United States, except where this act otherwise provides, or the laws of the United States shall otherwise direct, and concurrent jurisdiction with the district courts of the crimes and offences cognisable therein.

Then follow two provisions, the effect of which is especially important to the question under consideration, viz.: "But no person shall be arrested in one district for trial in another in any civil action before a *circuit* or *district* court.

"And no civil suit shall be brought *before either of said courts* against an inhabitant of the United States, by *any* original process in *any* other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ."

The further and other provisions of the statute it is unnecessary to recite, as they do not bear on the question; but it is of some significance to note that the Constitution of the United States had already provided that the trial of all crimes (except in cases of impeachment) * * shall be held in the state where the said crimes shall have been committed (art. 3, sect. 2, subd. 3). And an amendment proposed by the same Congress, and at the same session at which the Judiciary Act was passed, provided that in all criminal prosecutions the accused should enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed. (Amendment 6th to the Constitution.)

That an attachment of goods to compel appearance and a holding thereof to answer any claim which a plaintiff may recover is original process within the meaning of the language of the statute above quoted is not doubtful. That these courts cannot send their process into another district in suits at common law or in equity, and thereby obtain jurisdiction of the person, is also clear. That in actions at common law or in equity they cannot proceed by attachment and so obtain jurisdiction of a person who is an inhabitant of another district is settled; and indeed it is not here denied by the counsel for the libellants, that in such actions the statute applies according to its very terms, and that in order to sustain jurisdiction the defendant must be an inhabitant of the district in which the suit is brought or be found therein, if the defendant be an inhabitant of any

of the United States (see *Picquet* v. *Swan*, 5 Mason 35; *Toland* v. *Sprague*, 22 Pet. 300; *Ex parte Graham*, 4 Wash. C. C. R. 456; *Hollingsworth* v. *Adams*, 2 Dall. 396; *Day* v. *Newark India Rubber Co.*, 1 Blatch. 628, which applies the principle to a corporation created by the laws of another state; *Sayles* v. *Northwestern Ins. Co.*, 2 Curt. C. C. R. 212).

If, then, the present is a civil suit, within the meaning of the act, there is an end of the question, and jurisdiction of the defendant could not be acquired by attachment of goods.

1. The restriction cited, and which forms part of the eleventh section, is not confined in its operation to the jurisdiction conferred by *that* section. This is clear, because no *civil* jurisdiction is by that section conferred upon the district courts, and yet the restriction forbids that any civil suit shall be brought before either the *district* or circuit court in any other district, &c. The words "district court," or "*either* of said courts," would be senseless and inoperative if the restriction did not apply to other actions than those which were authorized by that section. The terms therefore plainly apply to the District Court in the exercise of some jurisdiction theretofore mentioned, and must operate to limit or explain the powers given to those courts in the previous ninth section. Including both courts in terms, the limitation operates upon the jurisdiction of each conferred by that statute. This is also settled by the cases cited, for if it were otherwise then the District Court could, in the exercise of such common-law jurisdiction as is given by the ninth section, proceed by attachment.

2. The Congress of the United States, when this restriction was imposed, were in the very act of framing a judicial system: they provided for the organization of the courts, for a distribution thereof throughout the states, bringing the federal tribunals within easy approach by every citizen for the determination of controversies deemed appropriate to these tribunals. Their jurisdiction as to subject-matter was made to depend chiefly upon the nature of the subjects and the residence of the parties who, when of different states, might prefer a tribunal existing and acting in freedom from state influence. The courts of original jurisdiction were located in each district. As they acted not under local authority, but derived their power from a government embracing the entire Union, they might seem warranted

in entertaining suits against defendants residing in any state however remote, and in sending process for service compelling appearance. It was, therefore, of great and manifest importance that some rule on this subject should be prescribed, and it was done, so as to prevent parties proceeded against from being called to a great distance to defend actions brought against them, when there was a federal tribunal at their own door competent to administer justice.

3. There is, therefore, no possible reason for any distinction in this respect between a suit in admiralty and a suit in equity, or a suit at law. A suit *in personam*, in the court in admiralty, is within the jurisdiction of that court when founded on a maritime contract, or prosecuted for a marine tort. But no reason can be stated for requiring a party living in New Orleans or San Francisco to come to New York to defend an action or suit on the covenants in a charter-party, when he ought not to be required to come there to defend a suit at law, or in equity, founded on any commercial or common-law contract. For a marine tort committed by a resident of New Orleans he is liable at common law, and may also be held liable in the court of admiralty. There is no just reason for holding him to answer in such case in any district court of the United States, however remote, if the plaintiff elects to proceed in admiralty, while if the plaintiff proceed at common law he must sue in the district of the defendant's residence, or in the district in which he may be found. The reason of the Act of Congress includes suits *in personam* in admiralty as fully as suits in equity or at law.

4. The word "civil" is used in the Act of Congress in distinction from "criminal." In the ninth and eleventh sections, conferring jurisdiction on the district and circuit courts, Congress had spoken of "crimes and offences," "civil causes of admiralty and maritime jurisdiction," "suits for penalties and forfeitures," "causes where an alien sues for a tort," "suits at common law," "suits against consuls" other than "for offences," "suits of a civil nature at common law or in equity," and then declared that "no civil suit" shall be brought, &c. A civil cause of admiralty and maritime jurisdiction is prosecuted by a suit. It is within the terms of the restriction as clearly as a "cause where an alien sues for a tort." It was wholly unnecessary in the restrictive clause to recite again the several terms previously employed, as

suits for forfeiture, suits against consuls, suits at common law, &c., and civil causes in admiralty. These are all civil in their nature. A cause in admiralty is so expressly described; it is a *civil* cause. The general term civil suit was apt to describe all these actions and causes of action, and it was so employed; and for the reason that as the Constitution provided that criminal prosecutions, jurisdiction whereof was given by this act to the circuit and district courts, should be had in the state where the crime was committed, so also civil suits against an inhabitant of the United States should be brought in the district whereof he was an inhabitant. Jurisdiction of crimes and offences as well as of proceedings of a civil nature being conferred on these courts by the sections mentioned, this classification by the word civil as distinguished from criminal was an essential conformity to the constitutional requirement that crimes and offences should be prosecuted where committed. The restriction, therefore, made the system in this respect complete.

5. This view of the effect of this statute securing to inhabitants of the several states the right of being sued within the district whereof they are respectively inhabitants is therefore in perfect consistency with the claim that courts of admiralty have general power to proceed *in personam* by attachment of goods where the defendant cannot be found within the district, so far as that is asserted in *Manro* v. *Almeida*, 10 Wheat. 473, or in *King* v. *Shepard*, 3 Story 349, *Boyd* v. *Urquardt*, 1 Sprague 423, *Bonyson* v. *Miller*, Bee 186. The limitation is the result of the act of Congress, and does not deny the original jurisdiction or practice of those courts, nor their present power or jurisdiction when the respondent is an alien non-resident, or being an inhabitant conceals himself or absconds so that he cannot be found.

6. To the suggestion that the Acts of Congress regulating the process and practice of the courts are in such general terms that they and the rule of the Supreme Court in admiralty have operated to modify the Act of 1789, limiting jurisdiction in this respect, it is sufficient to say, that these acts are not designed to alter or enlarge the jurisdiction of the courts, but only to regulate the exercise of jurisdiction where it exists. I understand this to be distinctly affirmed in *Toland* v. *Sprague*, already cited. Indeed, if these acts are held to authorize the Supreme Court

by rule to abrogate the restriction in the Act of 1789, in any respect, it cannot be confined to the jurisdiction of courts of admiralty, for the Act of 1842 (relied upon as above) gives the same power touching proceedings at the common law and in equity as in admiralty, and the construction and effect contended for would enable that court practically to repeal all the restrictions contained in the Act of 1789, on this subject, and authorize common-law actions against inhabitants of any state to be brought in any district of the United States.

Of the case of *Clarke* v. *The New Jersey Steam Navigation Company*, 1 Story 531, and the *New Jersey Steam Navigation Company* v. *Merchants' Bank*, 6 How. 344, it is sufficient to say that the point discussed in this case was neither raised nor decided in either. And the first-named is full to the effect above asserted, that on this question a corporation stands in the same position as a natural person. The effect of the eleventh section of the Judiciary Act on the power of the court to proceed against either was not raised, discussed, or decided. The decision in the last-named case related first to the merits, and second to the inquiry whether the case was in its nature cognisable in a court of admiralty. The synopsis of the case first named, as reported, would suggest that the point in question was decided adversely to the views I have expressed, but, in truth, the point was not raised, the opinion stating that it had not been doubted, and refers to the general doctrine of *Manro* v. *Almeida*, with which my views are in no conflict. The case last referred to suggests what is perhaps sufficiently obvious without discussion, that the jurisdiction of courts of admiralty by libel and process *in rem* is in no conflict but is in entire harmony with the views I have expressed. For in those cases the court have jurisdiction of the *rem* wholly irrespective of the question to whom it belongs. For all the purposes of the proceeding the liability rests upon the *rem*, and it is made to answer. In form and in substance that, and that only, is charged. It is a proceeding for the enforcement of a maritime lien already existing or acquired by the seizure of the subject of the lien, and to be enforced against it, without regard to questions of title or ownership, and one who intervenes as claimant does so not to defend himself from liability, but for the protection of the *rem* proceeded against. Nor is the right

of intervention at all confined to one who is liable upon the same cause of action. Such a proceeding—in very form adverse, not to an inhabitant of the United States, but to a *rem* or subject, within the district, upon which the liability was chargeable—was so clearly according to the established jurisdiction and practice of the courts of admiralty that it must have been recognised by Congress, and neither the words of the act, nor any reasonable implication therefrom affect it.

I have examined the opinion of Judge SHIPMAN of the District Court of the United States for Connecticut, in *Blair* v. *Bemis et al.*, in Admiralty (August 1863), and of Judge HOFFMAN of the District Court of the United States for California, in *Wilson* v. *Pierce* (15 Law Reporter 137, July 1852), and am constrained to concur in their conclusion. Their opinions embody many of the views I have suggested, and very ably, I think, present most of the considerations pertinent to the subject, with the authorities.

In the opinion of the District Court in this case, the opposite conclusion is ably sustained, and the practice said to be of long standing in the Southern District of New York is stated to be in conformity with his conclusion. If I could satisfy myself that such practice was not forbidden by the Judiciary Act, I should prefer to make no decision disturbing such practice. I have, therefore, retained the case for further and more deliberate consideration several months. I am, however, by my convictions, compelled to concur with the conclusions of Judges HOFFMAN and SHIPMAN, and to hold that jurisdiction of the defendants was not acquired by the District Court by the attachment in this case.

The decree herein must, therefore, be reversed, and the stipulators be discharged from their stipulations provisionally given, as before stated.